450-26
OAL Dkt. No. EDU 04922-26
Agency Dkt. No. 444-12/25

New Jersey Commissioner of Education

Final Decision

Joshua B. Prowisor,

Petitioner,

v.

Board of Education of the Borough of Gibbsboro, Camden County,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by the petitioner pursuant to *N.J.A.C.* 1:1-18.4, and the Gibbsboro Board of Education's (Board) reply thereto have been reviewed and considered.

In this matter, petitioner claims that the Board failed to credit him for his military service in violation of *N.J.S.A.* 18A:29-11 and seeks retroactive compensation of the amount he should have been paid since September 1, 1996, had his service been credited. The Administrative Law Judge (ALJ) granted the Board's motion to dismiss, concluding that petitioner is estopped under the doctrine of laches from pursuing his claim for retroactive application of the salary credit. However, the ALJ noted that petitioner is eligible for a prospective application of the credit provided that he is still employed by the Board and otherwise eligible for military service credit, for the reasons explained in *Lavin v. Board of Education*, 90 N.J. 145 (1982).

Petitioner takes exception to the ALJ's finding that "there is no evidence of intentional or fraudulent wrongdoing by respondent while petitioner, believing that he was entitled to the credit, failed to pursue his claim for thirty years." Exceptions at 1. Petitioner argues that he claimed credit for his military service when he was hired and presented his service record to the Board. Petitioner also argues that the Initial Decision should be modified to indicate that the Board treated the mandates of *N.J.S.A.* 18A:29-11 as discretionary, when they are not, thereby putting him in a "position where he was made to forgo a statutory right as a condition of being hired." *Id*. at 2. Finally, petitioner requests that the Commissioner reverse the dismissal of his petition.

In reply, the Board argues that the record is devoid of evidence establishing any intentional or fraudulent wrongdoing by the Board. The Board further argues that the ALJ properly considered the *Lavin* factors and correctly concluded that they weighed in favor of dismissing the petition.

Upon review, the Commissioner concurs with the ALJ, for the reasons stated in the Initial Decision, that petitioner's claim for retroactive application of the salary credit is barred by the doctrine of laches. The Commissioner does not find petitioner's exceptions to be persuasive. There is no evidence in the record of intentional or fraudulent wrongdoing by the Board. Furthermore, there is no evidence in the record establishing that petitioner was made to forgo a statutory right as a condition of being hired. Petitioner was free to both accept the position with the Board and file a petition with the Commissioner at the time he was hired, seeking to have his salary adjusted to reflect his service credit; instead, he accepted employment and waited thirty years to pursue his claim. Petitioner also signed off on annual employment contracts for the last

thirty years, which listed petitioner's salary without the credit. Nothing in the record suggests that petitioner was prevented from pursuing his claim, nor does petitioner provide a reasonable explanation for his delay. The New Jersey Supreme Court previously addressed similar circumstances in *Lavin*, *supra*, and concluded that the doctrine of laches barred the retroactive recovery of salary credit when a teacher did not make her claim for nine years after beginning her employment. Here, petitioner waited much longer to make his claim. Therefore, despite petitioner's commendable military service and teaching career, the Commissioner is constrained to dismiss his claim for retroactive credit. However, as noted by the ALJ, if petitioner remains employed by the Board, he is eligible for a prospective application of the credit.

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[1]



COMMISSIONER OF EDUCATION

Date of Decision: November 5, 2026
Date of Mailing: November 5, 2026

[1] This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A.* 18A:6-9.1. Under *N.J.Ct.R.* 2:4-1(b), a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION GRANTING MOTION TO DISMISS
OAL DKT. NO. EDU 04922-26
AGENCY DKT. NO. 444-12/25

JOSHUA B. PROWISOR,
Petitioner,
v.
BORO OF GIBBSBORO BOARD OF EDUCATION, CAMDEN COUNTY,
Respondent.

Dean R. Wittman, Esq., for petitioner (Zeller & Wieliczko, LLP, attorneys)

Laurel B. Peltzman, Esq. for respondent (Capehart & Scatchard, P.A., attorneys)

Record Closed: June 15, 2026 Decided: September 2, 2026

BEFORE **JUDITH LIEBERMAN**, ALJ:

STATEMENT OF THE CASE

Petitioner Joshua B. Prowisor asserts that respondent Boro of Gibbsboro Board of Education (Board) failed to credit him for his military service in violation of N.J.S.A. 18A:29-11 and seeks retroactive payment of the amount he should have been paid since

September 1, 1996, had his service been credited. Respondent filed a motion to dismiss arguing that the petition was filed outside the ninety-day statute of limitations established by N.J.S.A. 6A:3-1.5(g) and that it is barred by the doctrine of laches. Should the motion to dismiss be granted? Yes. The amount of time that has elapsed since petitioner knew that he was not awarded credit for his military service and the prejudice that the respondent would suffer if a retroactive award were ordered compels application of the doctrine of laches. Lavin v. Board of Education, 90 N.J. 145 (1982).

PROCEDURAL HISTORY

Petitioner filed his appeal on December 16, 2025. The Department of Education, Office of Controversies and Disputes, transmitted this matter to the Office of Administrative Law (OAL), where it was filed on March 26, 2026, as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. Respondent filed a motion to dismiss in lieu of an answer. During an April 27, 2026, respondent advised that it may file an amended motion and on May 14, 2026, it filed the motion. On June 15, 2026, petitioner filed an opposition brief, and the record for the motion closed.

FACTUAL DISCUSSION AND FINDINGS

The following is not disputed. I therefore **FIND** it as **FACT**.

Petitioner was enlisted in the United States Military since August 1, 1988. Petition at ¶ 2. In May 1996, he applied for a teaching position with respondent and advised respondent of his military service. Id. at ¶ 3. Respondent hired petitioner and he began a full-time teaching position on September 1, 1996, when he had eight years of military service. Id. at ¶¶ 5-6.

The Agreement between respondent and the Gibbsboro Education Association recognizes that “credit shall be given for military service up to a maximum of four years.” Id. at ¶ 23.

When he was hired, petitioner claimed credit for his military service under N.J.S.A. 18A:29-11 and presented his service record to respondent. Id. at ¶ 7. The documentation of his service, however, was inaccurate as it reported only his first six months of service. Ibid. Petitioner advised respondent that he could provide documentation of his full service. Id. at ¶ 8. Respondent advised petitioner that it would not offer credit for his military service and that his offer of employment would be rescinded if he did not accept it. Id. at ¶ 9. Petitioner accepted the position and did not receive credit for his military service. [1]

LEGAL ANALYSIS AND CONCLUSION

The rules of procedure governing petitions of appeal filed with the Commissioner permit a respondent to submit a motion to dismiss in lieu of an answer "on the grounds that the petitioner has advanced no cause of action even if the petitioner's factual allegations are accepted as true or for lack of jurisdiction, failure to prosecute or other good reason." N.J.A.C. 6A:3-1.5(g); N.J.A.C. 6A:3-1.10.

The education rules do not offer any guidance on the standards by which such motions should be assessed and the Uniform Administrative Procedure Rules (UAPR), N.J.A.C. 1:1-1.1 to -21.3, also do not address the standards for such motions. Under the UAPR, "[i]n the absence of a rule, a judge may proceed in accordance with the New Jersey Court Rules, provided the rules are compatible with these purposes." N.J.A.C. 1:1-1.3(a). R. 4:6-2 permits motions for judgment on the pleading. The "test for determining the adequacy of [the] pleading [is] whether a cause of action is 'suggested' by the facts," such that the "inquiry is limited to examining the legal sufficiency of the facts alleged on the face of the complaint." Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746. (1989)(citing R. 4:6-2(e); Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988); Rieder v. Dep't of Transp., 221 N.J. Super. 547, 552 (App. Div. 1987)).

[1] Petitioner also asserts that respondent failed to notify the Division of Pensions and Benefits that it erred in reporting his deployment time. Id. at ¶¶ 11-18. However, he acknowledges that this claim is not before the Commissioner of the Department of Education. Id. at ¶ 21.

Petitioner asserts that he should have been awarded credit under N.J.S.A. 18A:29-11, which provides in pertinent part that every teacher who "has served . . . in the active military or naval service of the United States . . . in time of war . . . shall be entitled to receive equivalent years of employment credit for such service as if he had been employed for the same period of time in some publicly owned and operated . . . school or institution of learning . . . except that the period of such service shall not be credited toward more than four employment or adjustment increments." "When translated into wage increments, these service credits would affect a teacher's salary. . . . For example, a teacher with one year's military service would be treated as if he or she had completed one year of teaching." Lavin v. Board of Education, 90 N.J. 145, 148 (1982).

The Court explained that the "legislative purpose of N.J.S.A. 18A:29-11 is to reward veterans for service to their country in time of war. The reward takes the form of crediting the military service as teaching experience even though there is no functional relationship between the two." Id. at 151. "The emolument . . . was established by the Legislature as a reward or bonus for service in the military, and not for performance as a teacher." Ibid.

"Ninety-day Rule"

Respondent contends that petitioner's appeal of the denial of this service credit was untimely under N.J.A.C. 6A:3-1.3(i), which requires that appeals from final decisions of district boards of education must be filed with the Commissioner within ninety days:

> The petitioner shall file a petition no later than the 90th day from the date of receipt of the notice of a final order, ruling, or other action by the district board of education, individual party, or agency, that is the subject of the requested contested case hearing. This rule shall not apply in instances where a specific statute, regulation, or court order provides for a period of limitation shorter than 90 days for the filing of a particular type of appeal.

"The ninety-day rule has been strictly followed and applied almost without exception. D.Q. o/b/o S.Q. v. Sch. Dist. of Newark, 2009 N.J. AGEN LEXIS 640 (Jan. 21,

2009).[2] In Dreher v. Jersey City Bd. of Educ., a petition filed only two days after the ninety-day period was dismissed as untimely. 1987 S.L.D. 1706, aff'd, 1988 S.L.[D]. 2439 (State Bd. of Educ. 1988), rev'd on other grounds, A-6120-82 (App. Div. 1989), cert. denied, 117 N.J. 138 (1989)." Hendrickson v. Board of Education of the City of Rahway, Union County and Ray Lopez, Board Member, 2018 N.J. AGEN LEXIS 164, *13-14 (March 5, 2018), adopted, Comm'r, (April 13, 2018), Commissioner of Education Decision (rutgers.edu).

The Supreme Court determined that statutes of limitations are inapplicable in cases such as this. Because the statutory credit for military service "should be considered as a statutory entitlement, rather than as an element of the employment contract" the six-year statute of limitations for contract claims is inapplicable. Lavin, 90 N.J. at 151. The same reasoning was applied to the ninety-day limitations period. In Kaprow v. Bd. of Educ. of Berkeley Twp., 131 N.J. 572 (1993), the Court addressed whether Kaprow's appeal of the termination of his position via a reduction in force (RIF) was time-barred because it was filed more than ninety days from his receipt of notice of the RIF. The Court distinguished Kaprow's claim from Lavin's: Because Kaprow's rights under the law governing reductions in force were not entitlements but were instead associated with his role as an educator, he was subject to the ninety-day statute of limitation. Consequently, it can be reasoned that the ninety-day statute of limitations cannot apply to petitioner's claim. I therefore **CONCLUDE** that petitioner's claim is not time-barred by N.J.A.C. 6A:3-1.3(i).

Laches

Respondent also argues that petitioner's claim is barred by the doctrine of laches. In Lavin, the Court described the doctrine as "such neglect or omission to assert a right as, taken in conjunction with the lapse of time, more or less great, and other circumstances causing prejudice to an adverse party, operates as a bar in a court of equity." 90 N.J. at 151 (quoting 2 Equity Jurisprudence § 419, at 171-72 (5th ed. 1941)).

[2] This decision and other unpublished and administrative decisions cited here are not binding. They are referenced because they provide relevant guidance.

Also, a "long lapse of time, if unexplained, may create or justify a presumption against the existence or validity of plaintiff's right and in favor of the adverse right of defendant; or a presumption that if, plaintiff was ever possessed of a right, it has been abandoned or waived, or has been in some manner satisfied; or that plaintiff has assented to, or acquiesced in, the adverse right of defendant[.]" Ibid.

The impact of the delay upon the other party must be evaluated. The "length of delay, reasons for delay, and changing conditions of either or both parties during the delay are the most important factors that a court considers and weighs." Id. at 152. (citation omitted).

> The length of the delay alone or in conjunction with the other elements may result in laches. It is because the central issue is whether it is inequitable to permit the claim to be enforced, that generally the change in conditions or relations of the parties coupled with the passage of time becomes the primary determinant. That is why some courts have stated that the mere lapse of time is insufficient, though, as indicated above, that is an overstatement of the principle. Inequity, more often than not, will turn on whether a party has been misled to his harm by the delay.
>
> [Id. at 152-153 (internal citations omitted).]

The circumstances in Lavin are similar to those presented here; however, the delay in that case was considerably shorter. Lavin served in the military for over two years and, twenty-three years later, was hired as a teacher and was eligible for the military employment credit. She claimed the credit nine years after her employment began but her application was rejected. She appealed to the Commissioner of the Department of Education who awarded her retroactive and prospective credit; however, the retroactive award was reversed by the State Board of Education and the Appellate Division agreed that she was not entitled to the credit under the doctrines of laches and estoppel.

The Supreme Court affirmed. It noted that Lavin and the Board of Education were unaware of the statute and "[i]f the parties' ignorance of the statute were the only circumstance," it "would probably not invoke the [laches] doctrine." 90 N.J. at 153. However, it considered additional factors. First, the Board of Education "did not budget

for this additional expense, relying as it did on its mistaken belief that [Lavin's] salary had been correctly computed." Id. at 153. The Board of Education did not know to plan for the expense of the additional salary credit and thus "innocently" reduced the total amount that it needed to budget for and raise via taxation. Id. at 154. This was "aggravated" because the same problem occurred for ten years and to "rectify the error would necessitate including in the current budget the full aggregate amount claimed." Ibid. Given the nature of municipal budgeting, this "could have the dual effect of causing some other service to be diminished[.]"[3] Ibid. It would also cause the "complete tax burden" to be placed on existing taxpayers even though the "costs should have been distributed over a ten-year period." Ibid.

Second, a large number of similarly situated teachers had pending claims. The financial burden of those claims was estimated to be over $4.5 million at that time. The Court determined that "it is fair and equitable to treat all claims of this nature in like manner. This bright line treatment has the additional advantage of administrative ease. Under these peculiar circumstances, wherein public entitled are involved, petitioner and others situated like her should not be granted retroactive monetary relief.[4] Ibid.

Here, petitioner waited thirty years to appeal the denial of his service credit even though he believed he was entitled to the credit. He did not offer a reasonable rationale for the thirty-year delay. Moreover, it can reasonably be concluded that the financial prejudice that respondent would suffer would be considerably greater than that presented in Lavin.

Despite this, petitioner argues that respondent should be estopped from invoking the doctrine of laches because it should not applied to shield wrongful conduct. The principle is "'a self-imposed ordinance that closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief.'" Phoenix Pinelands Corp. v. Davidoff, 467 N.J. Super. 532, 589 (App. Div. 2021)(quoting

[3] The Court referred to the record in Union Township Teachers Assoc. v. Board of Education of Township of Union, 90 N.J. 161 (1982), which it issued the same day as Lavin.
[4] However, the Court also held that they were entitled to relief for the time after they made their claims. Lavin, 90 N.J. at 155.

Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co., 324 U.S. 806, 814 (1945)). "'[W]hile equity does not demand that its suitors shall have led blameless lives, . . . it does require that they shall have acted fairly and without fraud or deceit as to the controversy in issue.'" Ibid. (quoting Precision Instrument, 324 U.S. at 814-15)(additional internal citations omitted). "The misconduct justifying invocation of the doctrine need not be punishable as a crime or such as would 'justify legal proceedings of any character. Any willful act concerning the cause of action which rightfully can be said to transgress equitable standards of conduct is sufficient cause for the invocation of the maxim[.]'" Ibid. (quoting Precision Instrument, 324 U.S. at 815). "The maxim is based on public policy" and "assumes greater significance when the litigation concerns the public interest." Id. at 589-590.

Petitioner contends that the "paramount" public interest that is at issue here is the "protect[ion]" of the "reward given to a veteran by the Legislature" and that respondent should not be permitted to "obtain a procedural or substantive benefit flowing directly from its failure to comply with statutory obligations." Pet'r's Br. at 4. To conclude otherwise "would reward noncompliance and undermine the legislative framework established to protect veterans seeking to continue their public service within education." Ibid. He further argues that public employers would be incentivized to disobey statutory mandates and lead to the erosion of the public's "confidence in the administration of public education." Id. at 5.

Clearly, the Legislature has determined that there is value in rewarding an enhanced salary to veterans and military personnel who enter the teaching professions. It is also clear, based upon the Supreme Court's analysis in Lavin, that there is a significant public interest in protecting the public fisc and the financial health of boards of education. This consideration weighed heavily in Lavin, even though the teacher delayed in filing her claim by only nine years. The same reasoning must apply when the delay is thirty years.

Furthermore, the school board in Lavin did not know the applicable law and its ignorance deprived its teacher of income to which she was entitled. Here, there is no evidence of intentional or fraudulent wrongdoing by respondent while petitioner, believing

that he was entitled to the credit, failed to pursue his claim for thirty years. When weighed against the substantial prejudice that respondent would suffer if required to pay thirty years' of additional salary, I am compelled to **CONCLUDE**, despite petitioner's commendable military service and teaching career, that he is estopped by the doctrine of laches from pursuing his claim for retroactive application of the salary credit. However, if he is still employed by respondent and otherwise eligible for the military service credit, he is eligible for a prospective application of the credit, for the reasons explained in Lavin v. Board of Education, 90 N.J. 145 (1982).

ORDER

I **ORDER** that respondent's motion to dismiss is **GRANTED** and the petition is **DISMISSED.**

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified, or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION,** who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify, or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**. **Exceptions may be filed by email to ControversiesDisputesFilings@doe.nj.gov or by mail to Office of Controversies and Disputes, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**. A copy of any exceptions must be sent to the judge and to the other parties.

September 2, 2026 _____
DATE

JUDITH LIEBERMAN, ALJ

Date Received at Agency: September 2, 2026

Date E-Mailed to Parties: _____

JL/ml